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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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MARINA GARDENS – BDS, LLC, a Nevada  
Limited Liability Company; MARINA GARDENS  
– RAF, a Nevada Limited Liability Company,

Plaintiffs,

v.

HOUSTON SPECIALTY INSURANCE  
COMPANY, a Texas Corporation; ENGLE  
MARTIN & ASSOCIATES, LLC, a Georgia  
Limited Liability Company; DOES I – XXX; and  
ABC CORPORATIONS A-Z, inclusive,

Defendants.

Case No. 3:19-cv-00048-LRH-WGC

ORDER

Plaintiffs Marina Gardens – BDS, LLC and Marina Gardens -- RAF initiated this action in the Second Judicial District Court for Washoe County, Nevada on December 26, 2018. On January 31, 2019, on the basis of diversity jurisdiction, Defendants Houston Specialty Insurance Company and Engle Martin & Associates, LLC, filed a notice of removal to this court (ECF No. 1<sup>1</sup>).

After review of the complaint and Defendants’ petition for removal, the court finds that it requires more evidence to determine whether it has subject matter jurisdiction over this case.

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<sup>1</sup> Refers to the court’s docketing number.

1 While it appears that the parties are of diverse citizenship<sup>2</sup>, Defendants have not demonstrated that  
2 the amount in controversy exceeds \$75,000.

3 “[A]ny civil action brought in a State court of which the district courts of the United States  
4 have original jurisdiction, may be removed by the defendant . . . to the district court of the United  
5 States for any district . . . where such action is pending.” 28 U.S.C. § 1441(a). Among other  
6 reasons, the district courts of the United States have “original jurisdiction” where there is diversity  
7 of citizenship between the parties and the amount in controversy, exclusive of interest and costs,  
8 exceeds \$75,000. 28 U.S.C. § 1332(a).

9 “If . . . it appears that the district court lacks subject matter jurisdiction, the case shall be  
10 remanded.” 28 U.S.C. § 1447(c). “Federal jurisdiction must be rejected if there is any doubt as to  
11 the right of removal in the first instance.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992)  
12 (citing *Libhart v. Santa Monica Dairy Co.*, 592 F.2d 1062, 1064 (9th Cir. 1979)). Moreover, the  
13 removal statute is construed restrictively and in favor of remanding a case to state court. *See*  
14 *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108-09 (1941); *Gaus*, 980 F.2d at  
15 566.

16 After a defendant files a petition for removal, the court must determine whether federal  
17 jurisdiction exists, even if no objection is made to removal. *See Rains v. Criterion Systems, Inc.*,  
18 80 F.3d 339, 342 (9th Cir. 1996). The defendant always has the burden of establishing that removal  
19 is proper. *Gaus*, 980 F.2d at 566. Normally this burden is satisfied if the plaintiff claims a sum  
20 greater than the jurisdictional requirement. *Id.*

21 However, if the plaintiff does not claim a sum greater than the jurisdictional requirement,  
22 the defendant cannot meet its burden by merely alleging that the amount in controversy is met:  
23 “The authority which the statute vests in the court to enforce the limitations of its jurisdiction  
24 precludes the idea that jurisdiction may be maintained by mere averment . . .” *Id.* (quoting *McNutt*  
25 *v. Gen. Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936)) (emphasis omitted).

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26 <sup>2</sup> Plaintiffs are both Nevada limited liability companies. Defendant Houston Specialty Insurance Company  
27 is a Texas corporation. Defendant Engle Martin & Associates, LLC is a Georgia limited liability company.

1 In some cases, it may be “‘facially apparent’ from the complaint that the jurisdictional  
2 amount is in controversy.” *See Singer v. State Farm Mut. Auto. Ins.*, 116 F.3d 373, 377 (9th Cir.  
3 1997) (delineating the “appropriate procedure for determining the amount in controversy on  
4 removal” as described in *Allen v. R & H Oil & Gas Co.*, 63 F.3d 1326 (5th Cir. 1995)). However,  
5 “[w]hen the amount is not facially apparent from the complaint, the court may consider facts in  
6 the removal petition and may require parties to submit summary-judgment-type evidence relevant  
7 to the amount in controversy at the time of removal.” *Kroske v. U.S. Bank Corp.*, 432 F.3d 976,  
8 980 (9th Cir. 2006) (internal quotation marks omitted).

9 Here, in arguing that the amount in controversy requirement has been satisfied, Defendants  
10 rely solely on an averment by counsel that a demand letter referred to in Plaintiff's complaint  
11 contained a demand in excess of the jurisdictional amount. The letter has not been produced or  
12 verified, nor is it attached to the complaint. It may be that the amount due and owing under the  
13 terms and conditions of the subject insurance policy exceeds the threshold amount for jurisdiction  
14 in this court, however there has been no showing of such an amount, except by mere averment, by  
15 removing defendants. Accordingly, there is insufficient evidence upon which to establish removal  
16 jurisdiction at this time.

17 The court will provide Defendants additional time to present “summary-judgment-type  
18 evidence” showing by a preponderance of the evidence that this case meets § 1332(a)’s amount in  
19 controversy requirement.

20 IT IS THEREFORE ORDERED that Defendants are granted twenty (20) days from the  
21 entry of this order to establish the minimum amount in controversy for federal jurisdiction.  
22 Plaintiff is granted ten (10) days to file an opposition. No reply is required.

23 IT IS SO ORDERED.

24 DATED this 13th day of February, 2019.

25   
26 LARRY R. HICKS  
27 UNITED STATES DISTRICT JUDGE  
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